

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA BOARD OF DENTISTRY

In the Matter of the
Dental License of
Russell B. Hofstad, DDS
License No. 4330

FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION

The above-entitled matter came on for hearing before Administrative Law Judge Peter C. Erickson at 1:00 p.m. on Thursday, January 28, 1988, at the Office of Administrative Hearings, Minneapolis, Minnesota. The record on this matter was closed on April 11, 1988, the date of submission of the last post-hearing brief .

Catherine E. Avina, Special Assistant Attorney General, Suite 136, 2829 University Avenue Southeast, Minneapolis, Minnesota 55414, appeared on behalf of the Minnesota Board of Dentistry. Russell B. Hofstad, D.D.S., 219 Ashland, Cambridge, Minnesota 55008, appeared on his own behalf.

Notice is hereby given that, pursuant to Minn. Stat. 14.61, the final decision of the Board shall not be made until this Report has been made available to the parties to the proceeding for at least ten days, and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the Board. Exceptions to this Report, if any, shall be filed with the Board at Suite 109, 2700 University Avenue West, St. Paul, Minnesota 55114. Pursuant to Minn. Stat. 214.10, subd. 2, a board member who was consulted during the course of an investigation may participate at the hearing, but may not vote on any matter pertaining to the case.

STATEMENT OF ISSUES

The issues to be determined in this proceeding are: (1) whether the Respondent, Russell B. Hofstad, has failed to maintain adequate safety and sanitary conditions in his dental office in violation of Minn. Stat.

150A.08, subd. 1(10) (1986) and Minn. Rules 3100.6200K. and 3100.6300, subps. 2 and 11; and (2) whether Respondent has failed to comply with the terms set forth in a Second Amended Consent Order of Conditional License issued to Respondent by the Board on April 23, 1987, in violation of Minn. Stat. 150A.08, subd. 1(13) (1986).

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Russell B. Hofstad, D.D.S., is licensed to practice dentistry in the State of Minnesota. He currently has a solo dental practice located at

219 Ashland, Cambridge, Minnesota. Dr. Hofstad has not had a dental assistant for the last five years and currently sees approximately 25 patients per week.

He is open every day, Monday through Friday, eight hours a day. Dr. Hofstad performs all of the housekeeping chores in his dental office himself.

2. On April 27, 1987, the Minnesota Board of Dentistry issued to Dr. Hofstad a Second Amended Stipulation for Conditional License and Second Amended Consent Order of Conditional License. Under the terms of the Order, Dr. Hofstad's license to practice dentistry was conditioned upon compliance with the following:

a. Licensee shall immediately scrub all floors throughout his office and continue to maintain their cleanliness;

b. Licensee shall immediately remove all debris and rubble from countertops in the operatories, scrub them clean, and maintain their cleanliness;

c. Licensee shall have completed the painting in the two operatories and the installation of shelving in the darkroom and the private office by March 15, 1987;

d. No laboratory work may be performed in operatory #1;

e. Licensee may seat and treat only prosthetic patients in operatory #1. Laboratory work shall be immediately screened from view from the patients and the hall;

f. Licensee shall have effected repairs to all electrical and plumbing fixtures and equipment by March 15, 1987, clean them, and maintain their cleanliness;

g. For all future dental treatment provided by Licensee, Licensee shall keep a record for each patient which indicates the treatment planned, the date of each visit and the teeth treated, the charges to the patient, and money received from the patient. Licensee shall complete all treatment in a professionally accepted time or state in the patient's record why treatment is delayed; and

h. Licensee shall permit the Board of Dentistry Complaint Committee to inspect the sanitary conditions of his dental office and review his patient records, including treatment plans, dates of treatment and teeth treated, charges to patients and payments received. Licensee shall ensure

that patient records are presented for review in a manner that does not breach patient confidentiality.

3. On September 2, 1987, two investigators from the Office of the Attorney General made an unannounced inspection of Dr. Hofstad's dental office. On that date, the investigators observed that a patient was being treated by Dr. Hofstad.

4. During the September 2, 1987 inspection, the following conditions existed in operatory #1 of Dr. Hostad's dental offices:

a. The counter to the immediate right of the doorway to the operatory was cluttered with used styrofoam cups, plaster models, rags, laboratory work, and dust;

b. A second counter located in the operatory was also cluttered with various laboratory materials;

c. The top of the radiator was cluttered with building materials;

d. The dental unit was partially dismantled so that the interior wiring was exposed. This dismantling had been done by Dr. Hofstad to enable him to find a water leak in the plumbing enclosed by the equipment panels;

e. The rheostat for the dental unit was sitting in a puddle of water;

f. The cuspidor was stained;

g. A cloth towel was being used as a head-rest on the patient chair and a second towel was hung from the back of the chair which was used by Dr. Hofstad to wipe his hands;

h. Operatory #1 did not have a sink or any other facility to wash hands.

5. The cluttered counters and radiator pose a threat to patients' health because they cannot be cleaned and disinfected due to the litter.

6. The use of cloth towels presents a risk of cross-contamination of patients by infectious agents. Use of cloth towels on head-rests or for the dentist to wipe his hands is not the standard of practice in Minnesota. The use of disposable, paper towels is the accepted practice in this State.

7. The dismantled dental unit poses a threat to patients due to the danger of electrical shock from the exposed wiring.

B. During the September 2, 1987 inspection, the investigators observed the following conditions in operatory #2 of Dr. Hofstad's dental offices:

a. The floor was covered with plaster dust;

b. An acetoline tank and an oxygen tank were stored on the floor close to a portable electric space heater;

c. An old dental unit was dismantled and covered with a sheet;

d. A sink located just outside of operatory #2 was dirty and the counter around it was cluttered. There were no towels, either paper or cloth, around the sink area.

9. During the September 2, 1987 inspection, the investigators observed

the following conditions in the business office in Dr. Hofstad's dental suite:

- a. The closet in the office had no shelves;
- b. The floor of the office was littered with debris and bags and boxes of paper;

c. Stacks of paper, boxes and books covered all the surfaces of tables, bookshelves and desks;

d. The office chair was broken and covered with papers.

10. On September 2, 1987, Dr. Hofstad's darkroom had still not been completed and x-ray developing materials were stored in a "communal" bathroom adjacent to the dental office.

11. An inspection of the patient records showed that individual patient records consisted of small index-type cards approximately four inches by five inches. Approximately 30 to 40 cards were inspected. Of these cards, only two were completely filled out with the patient's name, personal information, information regarding the services rendered to the patient, and the cost of the treatments, payments, and amounts owing. These cards did not contain any detailed medical histories.

12. Dr. Hofstad currently sterilizes instruments in a "Harvey" sterilizer, which uses a chemical vapor method of sterilization. This model requires a 20-minute cycle. When using this sterilizer, the instruments must be placed in bags for sterilization and then stored in the bags until used on patients. These bags are equipped by the manufacturer with a stripe on the outside to indicate that a cycle has been completed. The manufacturer also supplies spoor-bacteria indicator strips which are used to test whether a cycle achieves proper gas pressure to affect sterilization. Dental standards require testing a sterilizer at least monthly with the spoor-bacteria indicator strips. Dr. Hofstad has not ever tested the efficiency of his sterilizer by using the spoor-bacteria strips.

13. Dr. Hofstad does not place his instruments in the specially designed bags for sterilization purposes. Rather, he sterilizes instruments in trays, removes the instruments from the trays, and then stores the instruments loose in drawers until needed for use. Instruments are then given a "flash" cycle in the sterilizer for ten minutes before use on a patient. Dr. Hofstad's method of handling and storing instruments after initial sterilization exposes them to recontamination.

14. Dr. Hofstad uses either alcohol or zephrein chloride to disinfect surfaces, such as bracket trays, which cannot be sterilized. Neither zephrein chloride nor alcohol are on the list of acceptable products for surface

disinfection of the American Dental Association Council on Dental Therapeutics.

Rather, a bleach solution is the accepted agent for disinfection.

15. Unannounced inspections conducted by an investigator for the Board on July 18, 1983 and June 3, 1987 revealed the same cluttered conditions in operatories #1 and #2 as set forth in the Findings above.

16. For the past three years, Dr. Hofstad's office-landlord has failed to do the needed maintenance and repair because it was anticipated that the office building would be razed. However, a recent decision was made to renovate the building. Consequently, plumbing and electrical deficiencies have or will be corrected.

17. Pictures of Dr. Hofstad's office taken on January 22, 1988 show that he has cleaned up almost all of the clutter and debris found by the

investigators during the September 2, 1987 inspection. The pictures show a clean, well kept and maintained office facility. However, operatory #1 still does not have a usable sink.

18. Subsequent to the September 2, 1987 inspection, the Minnesota Board of Dentistry issued a Notice of and Order for Hearing to Dr. Hofstad on November 20, 1987. The Notice alleges that Dr. Hofstad has failed to maintain adequate safety and sanitary conditions in his dental office and has failed to comply with the terms of the April 23, 1987 Consent Order. It states additionally that if such allegations are proved, disciplinary action against Respondent's license may result.

PERTINENT STATUTES AND RULES

150A.08 SUSPENSION, REVOCATION, LIMITATION, MODIFICATION OR DENIAL OF LICENSE.

Subdivision 1. Grounds. The board may refuse or by order suspend or revoke, limit or modify by imposing conditions it deems necessary, any license to practice dentistry or dental hygiene or the registration of any dental assistant upon any of the following grounds:

(10) Failure to maintain adequate safety and sanitary conditions for a dental office in accordance with the standards established by the rules of the board;

(13) Violation of, or failure to comply with, any other provisions of sections 150A.01 to 150A.12, the rules of the board of dentistry, or any disciplinary order issued by the board or for any other just cause related to the practice of dentistry. Suspension, revocation, modification or limitation of any license shall not be based upon any judgment as to therapeutic or monetary value of any individual drug prescribed or any individual treatment rendered, but only upon a repeated pattern of conduct.

3100.6200 CONDUCT UNBECOMING A LICENSEE OR REGISTRANT.

"Conduct unbecoming a person licensed to practice dentistry or dental hygiene or registered as a dental assistant or conduct contrary to the best interests of the public," as used in Minnesota Statutes, section 150A.08, subdivision 1, clause (6), shall include the act of a dentist, dental hygienist, registered dental assistant, or applicant in:

K. failing to maintain adequate safety and sanitary conditions for a dental office as specified in part 3100.6300.

3100.6300 ADEQUATE SAFETY AND SANITARY CONDITIONS FOR DENTAL OFFICES.

Subpart 1. Minimum conditions. The following subparts 2 to 11 are minimum safety and sanitary conditions.

Subpart 2. Premises. The premises shall be kept neat and clean, and free of accumulations of rubbish, ponded water, or other conditions of similar nature which would have a tendency to create a public health nuisance.

Subp. 3. Housekeeping facilities and services. Housekeeping facilities and services necessary to assure comfortable and sanitary conditions for patients and employees shall be utilized.

Subp. 4. Control of insects and vermin. The premises shall be kept free of ants, flies, roaches, rodents, and other insects or vermin. Proper methods for their eradication or control shall be utilized.

Subp. 5. Refuse disposal. Refuse shall be kept in approved containers and emptied at frequent intervals.

Subp. 6. Heating, lighting, and other service equipment. The heating of offices shall be by heating systems conforming to state and local heating codes and regulations. Individual room heaters shall be so located as to avoid direct contact with any combustible material. Installation and maintenance of electric wiring, motors, and other electrical equipment shall be in accordance with applicable state and local electric codes and regulations.

Subp. 7. Water supply. An ample supply of water of a safe, sanitary quality, from a source that is approved by the local health officer, shall be piped under pressure, and in an approved manner, to all equipment and fixtures where the use of water is required.

Subp. 8. Plumbing. Plumbing shall be in accordance with all applicable plumbing codes. Adequate hand-washing facilities, of an approved type, shall be provided convenient to the work area. Hand-washing facilities shall be equipped with soap and towels, and the drain from such facility shall be properly trapped and connected directly to the waste disposal system.

Subp. 9. Disposal of liquid and human waste. All liquid and human waste, including floor wash water, shall be disposed of through trap drains into a public sanitary sewer system in localities where such a system is available. In localities where a public sanitary sewer system is not available, liquid and human waste shall be disposed of through trapped drains and in a manner approved by the local health officer.

Subp. 10. Clean rooms. Floors, walls, and ceilings of all rooms, including store rooms, shall be clean and free of any accumulation of rubbish.

Subp. 11. Sterilizers and sterilization. Every dental office shall be equipped with adequate sterilizing facilities for instruments and supplies. Sterilization procedures shall be adequately and regularly employed.

Based upon all of the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Minnesota Board of Dentistry have jurisdiction over this matter pursuant to Minn. Stat. 14.50 and

150A.08 (1986). The Notice of and Order for Hearing issued by the Board in this matter was in all respects proper as to form and content. The Board has complied with all procedural and substantive requirements of law or rule.

2. The Findings above show clearly that Dr. Hofstad was in violation of the Second Amended Consent Order at the time of the September 2, 1987 inspection. Consequently, a violation of Minn. Stat. 150A.08, subd. 1(13) has been found.

3. At the time of the September 2, 1987 inspection, Dr. Hofstad was in violation of Minn. Stat. 150A.08, subd. 1(10) and Minn. Rule 3100.6200K. and 3100.6300.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the Minnesota Board of Dentistry take appropriate disciplinary action based upon the Findings and Conclusions set forth herein.

Dated this 19 day of April, 1988.

PETER C. ERICKSON
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: Taped, No Transcript Prepared.

MEMORANDUM

The record in this matter shows very clearly that Dr. Hofstad's office was a cluttered mess at the time of the September 2, 1987 inspection. It is almost inconceivable that Dr. Hofstad could have treated patients in an office with so much scattered debris, dust, and a dental unit with the "insides" exposed. The record in this matter and Findings above do not necessitate an in-depth discussion of each piece of debris or unsanitary condition and the

rule or statutory provision violated. Two specific conditions will be discussed below, however.

Dr. Hofstad contends that his use of a short, "flash" cycle with the Harvey sterilizer is sufficient for sterilization purposes. The Board's witness, Patricia Glasrud, testified only that because the sterilizer required an initial 20-minute cycle, she did not see how a shorter cycle would suffice

after possible recontamination. Dr. Hofstad has offered a study into the record which shows, however, that a shorter "flash" cycle is sufficient to sterilize pre-sterilized pieces of equipment.¹ Dr. Hofstad has testified, however, that he does not use the manufacturer's recommended procedures when sterilizing his instruments in the Harvey sterilizer. Additionally, he does not store the instruments in the sterilization bags but rather stores instruments in drawers in his office. There is no indication in the study that Dr. Hofstad submitted as to the initial sterilization process that the instruments were subjected to. Also, Dr. Hofstad admits that he does not regularly test his sterilizer for efficiency and effectiveness. Consequently, the Judge specifically finds that Dr. Hofstad's current use of the Harvey sterilizer in the manner he testified to is in violation of Minn. Rule 3100.6300, subp. 11.

Dr. Hofstad testified that he uses cloth towels for the dental chair headrest and for wiping his hands when treating a patient. He stated that the headrest towel is changed after every other patient and that he changes the hand-wiping towel after every patient. Dr. Hofstad testified that his hands are very sensitive to paper towels so that he cannot use them. The standard of dental practice in the community is the use of disposable paper headrests and towels, however. If Dr. Hofstad changed his headrest after every patient and changed his hand towel after every patient, the use of cloth towels may be appropriate in this case. However, the Judge questions Dr. Hofstad's assertions that he uses clean towels as often as he does. The investigators did not see a stack of clean towels during their inspection and Dr. Hofstad seemed to be uncertain at the hearing as to where the clean towels were located. He stated further that he threw the dirty towels into an open wastebasket after they had been used. The Judge specifically concludes that Dr. Hofstad's use of cloth towels as observed by the investigators on September 2, 1987 was in violation of Minn. Rule 3100.6300, subp. 3.

The Judge further points out that pictures taken of Dr. Hofstad's dental offices on January 22, 1988 show a clean, well-kept facility. It is obvious that Dr. Hofstad does not have an inability to maintain a "clean" practice. He did, however, fail to comply with the Board's Consent Order which required a clean and sanitary practice issued on April 23, 1987. Disciplinary action is warranted for this failure to comply with the Consent Order.

P.C.E.

lthis study was submitted with Dr. Hofstad's post-hearing memorandum. The Board has objected to the study because it was not offered during the hearing itself. However, because Dr. Hofstad appeared pro se and was not completely aware of what the Board's case would be, the Judge has reviewed, and considered, the "flash" study results.